HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.4059 of 1995

Between:

Palagiri Subhan … Petitioner

And

The District Judge, Cuddapah and others.

… Respondents

:: ORDER::

Counsel for Petitioner : B. Viswanatha Reddy

Counsel for Respondents 1 and 2 : G.P. for Revenue

Counsel for Respondent No.4 : K.G. Krishna Murthy

December 23, 2005

In this petition, the petitioner has prayed for quashing orders dated 14-2-1992 and 6-1-1995 passed by Principal District Munsif, Rayachoti and District Judge, Cuddapah in A.T.C.No.2 of 1982 and A.T.A. No.1 of 1992 respectively whereby the courts below rejected the petitioner's claim for being declared as permanent tenant of the land comprised in Survey No.215/1 situated in Village Rowthukunta.

A perusal of the record shows that the petitioner filed an application under Rule 3 (A)(a) of the A.P. Tenancy Act, 1956 (for short 'the Act) for being declared as a cultivating tenant of respondents No.3 to 7 in respect of Ac.1-75 cents of land comprised in Survey No.215/1 of Rowthukunta Village, Rayachoti by making the following assertions:

(i) the land measuring Ac.5-84 cents comprised in Survey No.215/1 originally belonged to Sri M. Subramanyam

(ii) Sri M. Subramanyam leased out the land to Sri Peeru Sab (father of the petitioner) sometime prior to 1932 and Sri Peeru Sab cultivated the same;

(iii) Later on, respondents No.6 and 7 acquired Ac.2-34 cents of the total land comprised in Survey No.215/1. However, the remaining land

measuring Ac.3.5 continued to be cultivated by his father.

(iv)Sri M.Subramanyam sold Ac.1-75 cents of land to his father vide sale-deed dated 25-7-1932, but no formal partition was done.

(v) After the death of his father, the petitioner is said to have been cultivating Ac.1-75 of land purchased by his father and the remaining Ac.1-75 belonging to the respondents.

The application of the petitioner was contested by respondent No.2. He denied the petitioner's assertion that the land had been leased out to his father and that he was in cultivating possession. According to respondent No.2, Sri M. Subramanyam sold Ac.2-92 cents out of Ac.5-84 cents of Survey No.215/1 to the petitioner's father. The remaining land fell to the share of his father.

On a consideration of the pleadings of the parties and evidence produced by them, learned Principal District Munsif, Rayachoti dismissed the application of the petitioner with costs by observing that he had failed to make out a case for being declared as a tenant of the entire land comprised in Survey No.215/1.

The petitioner filed two separate appeals challenging the order passed by the Principal District Munsif. In A.T.A.No.1 of 1992, he challenged the finding recorded on the merits of his claim and in A.T.A. No.2 of 1992 he challenged the imposition of costs. The learned District Judge independently evaluated the evidence produced by the parties and recorded a reasoned finding that the appellant has failed to prove his possession over the entire land situated in Survey No.215/1. Accordingly, he dismissed A.T.A.No.1 of 1992. However, the appeal filed against the imposition of costs was allowed.

Learned counsel for the petitioner argued that even though the findings recorded by the learned Principal District Munsif, Rayachoti and District Judge, Cuddapah on the issue of petitioner's cultivating possession of Ac.1-75 cents in Survey No.215/1 is a finding of fact, the same is liable to be set aside because both the courts did not appreciate the evidence produced by his client in a correct perspective. Learned counsel submitted that the oral and documentary evidence produced by the petitioner clearly proved his possession over the land and the contrary version set out in the written statement of respondent No.2 are liable to be ignored. Learned Government Pleader and counsel for

respondent No.4 supported the impugned orders and argued that this court should not sit in appeal over the finding of fact recorded by the courts below.

I have given serious thought to the respective arguments. The prayer made in this petition is essentially for issuance of a writ of certiorari. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan** the Supreme Court considered the High Courts' power to issue a writ of certiorari and held:

> A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly,

as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Surya Dev Rai v. Ram Chander Rai** the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

i. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would

obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii. The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii. In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv. The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases

> where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

If the orders under challenge are scrutinized in the light of the above noted propositions, it is not possible to agree with the learned counsel for the petitioner that the same suffered from an error apparent on the face of the record and calls for interference by this Court under Article 226 of the Constitution. The learned Principal District Munsif, Rayachoti analysed the pleadings of the parties, referred to the oral as well as documentary evidence produced by them and concluded that Ex.A.1 produced by the petitioner did not create a tenancy right in his favour. He also analysed the oral testimony of the petitioner and concluded that the same could not be made basis for granting a declaration that he was in cultivating possession.

The learned District Judge framed the following questions for determination:

1. Whether the petitioner is cultivating tenant of the respondents 1 to 5 of Ac.1-75 cents in S.No.215/1 and if so, whether he is entitled for declaration of his tenancy rights?

2. Whether the appellants in ATA No.2/92 are liable to pay exemplary costs to the second respondent in the tenancy petition?

3. Whether the certified copy of No.2 Adangal produced by the appellant in ATA No.1/92 is to be received as additional evidence on behalf of the petitioner?

He then referred to the evidence produced by the petitioner before the Principal District Munsif as also the application made by him for additional evidence and rejected the same by making the following observations:

> 12. As I have made a reference to non-filing of documentary evidence like Adangal extracts, at this juncture itself, I would like to deal with additional evidence petition filed by the appellant in ATA No.1/92. Though in the petition it is stated that the Adangal extract relates to the Faslis 1396 to 1400, the extract filed in fact relates to three Faslis only namely

Faslis 1397, 1399 and 1400. They relate to the year 1988, 1990 and 1991. Therefore, the document relates to a period which is long subsequent to the filing of the petition by the petitioner. Therefore, as it does not relate to the date of filing of the petitioner or to any Fasli prior to filing of the tenancy petition, in my considered opinion, it is not a relevant document to be received as additional evidence on behalf of the petitioner. Further the petitioner in his affidavit did not state why he did not produce the present No.2 Adangal extract in the lower Tribunal during the course of enquiry. In his affidavit itself, it is stated in para 3 that since he is in possession, his possession from 1982 is not denied by the respondents and to prove his possession he obtained Adangal extract from Mandal Office. Therefore, even according to the contents of his affidavit, he wants to file the Adangal extract to show his possession after 1982. The court is interested in knowing the possession as on the date of the petition and prior to the date of filing of the petition. Therefore, I am not inclined to receive the No.2 Adangal extract as additional evidence on behalf of the appellant. I am therefore dismissing the said petition.

The learned District Judge then independently analysed the evidence and came to the conclusion that the petitioner failed to prove his cultivating possession. Paragraphs 13 to 16 of the order passed by the learned District Judge read as under:

13. In the tenancy petition, the petitioner had stated that the lease premium is Rs.100/- per year. According to the petitioner, the said lease premium is fixed long prior to Ex.A.1. This circumstance itself indicates clearly in my considered opinion that the claim of tenancy set up by the petitioner is false. As clear from the sale deed Ex.A.1, the petitioner's father purchased Ac.1-75 cents for a sum of Rs.80/-. I do not think that even a fool would sell property getting lease premium of Rs.100/- per year for a paltry sum of Rs.80/- conferring absolute rights on the seller. The petitioner is strongly relying upon the contents of Ex.A.1 to prove the tenancy in favour of the petitioner's father. Nowhere in Ex.A.1 sale-deed, it is recited that the petitioner's father was cultivating any portion of S.No.215/1 by the date of Ex.A.1 sale deed as a tenant to Mullangi Subramanyam who executed the sale deed in favour of the petitioner's father. The total extent of S.No.215/1 is shown as Ac.5-84 cents. It is stated in the document that undivided half of it is sold to the petitioner's father are not given in the sale deed. The reasons for not giving the boundaries are stated

in a different ink in Ex.A.1 sale deed by interpolation. It is stated that without dividing S.No.215/1 keeping the land jointly the produce alone is being shared and therefore the boundaries are not given. According to the petitioner, these recitals indicate that the petitioner's father was a tenant by the date of Ex.A.1 and as he was paying grain to the vendor M. Subramanyam the above recitals were mentioned in Ex.A.1 sale deed. I am unable to accept the above interpretation. If really by the date of Ex.A.1 sale deed the petitioner's father was in possession of the entire land as a lessee of M.Subrahmanyam, it would have been recited clearly inEx.A.1 sale deed that the purchaser was already in possession of the entire land as a tenant and half of the land alone is being sold to the petitioner's father in Ex.A.1 sale deed. Further, if really the petitioner's father was in possession as cultivating tenant by the date of Ex.A.1 to the effect that since the petitioner's father was already in possession as a tenant, separate possession is not being delivered to him regarding half share purchased by him in S.No.215/1. Such a recital is conspicuously absent in Ex.A.1 sale deed. Further, there is another significant recital in Ex.A.1 sale deed to negative the interpretation put forward by the appellant. It is clearly recited in the sale deed that the petitioner's father is delivered possession of the property purchased by him on the date of the sale deed itself. This recital negatives the contention that the petitioner's father was already in possession of the petition schedule land. No other document is produced by the petitioner to prove his tenancy. The document relied upon by him namely Ex.A.1 does not support the contention advanced by the appellant. It is, therefore, clear that the petitioner did not adduce any satisfactory or clinching evidence to show that he is the cultivating tenant of the respondents on the date of the petition.

14. It is contended seriously on behalf of the petitioner that the respondents 1 to 5 are not the residents of the petition village and therefore they would not be in a position to cultivate the lands personally. Even if the respondents are unable to cultivate the lands personally for some reason or other, it does not amount that the petitioner or his father are the tenants of the respondents. On this aspect, it is the duty of the petitioner to adduce satisfactory and clinching evidence. The petitioner had not examined any neighbours of the petition schedule land on the date of the petition as a tenant of the respondents. It is not the evidence of P.W.2 that he is having any land in the vicinity of the disputed land. On the other hand, the respondents

examined some neighbours as R.Ws.2 and 3. R.Ws.2 and 3 deposed that the petitioner is not cultivating the petition schedule land and on the other hand R.2 is personally cultivating the disputed land. The evidence of R.2 is to the same effect.

15. There is also one another important aspect. It is the plea of the second respondent that before the present petition is filed, he sold his land in S.No.215/1 under an agreement of sale in July 1982 to three persons including R.W.4. Adinarayanareddy is one of the persons who purchased the petition schedule land from R.2. The agreement of sale is marked as Ex.X.1. The registered sale deed executed by R.2 in favour of Adinarayanareddy and others in pursuance of Ex.X.1 sale agreement are marked as Exs.X.3 to X.5. Ex.X.2 is an endorsement on the back of Ex.X.1 agreement extending time for performance of the sale agreement. It is the plea of the second respondent that before the present petition is filed, he delivered possession of the land to his purchasers. He made this position very clear in his counter. He also stated that he is not having any interest in the petition schedule land on the date of the petition. In spite of these pleadings, the petitioner did not take any steps to implead R.W.4 and other purchasers as parties to his petition. It is to be stated that the sale agreement is not after the petitioner filed his tenancy petition. Therefore, R.W.4 and others are the proper parties against whom the petitioner had to obtain declaration of his tenancy rights if really he is a cultivating tenant. Non-impleading of those parties to the tenancy petition, in my considered opinion, is fatal to the case of the petitioner.

16. In his chief-examination itself, P.W.1 admitted that Adinarayanareddy is in possession of the land. Therefore, as the petitioner is not in possession of the tenancy land, he is not entitled for declaration.

In the course of hearing, I asked the learned counsel to point out any patent infirmity in the evaluation of evidence made by the learned Principal District Munsif and the learned District Judge, but he could not point out any such error. Therefore, the mere possibility of this Court forming a different opinion on a fresh evaluation of evidence cannot justify an inference that the

orders under challenge are vitiated by error of law. As a corollary, it must be held that the finding of fact recorded by the learned Principal District Munsif, Rayachoti, which has been confirmed by District Judge, Cuddapah does not call for interference under Article 226 of the Constitution.

In the result, the writ petition is dismissed. However, the parties are left to bear their own costs.

G.S. SINGHVI, CJ

December 23, 2005

svs